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9
 10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

13 YANGTZE MEMORY TECHNOLOGIES
 14 COMPANY, LTD.,

15 Plaintiff,

16 v.

17 MICRON TECHNOLOGY, INC., et al.,

18 Defendants.

19 MICRON TECHNOLOGY, INC.,

20 Counterclaim Plaintiff,

21 v.

22 YANGTZE MEMORY TECHNOLOGIES
 23 COMPANY, LTD., and YANGTZE
 24 MEMORY TECHNOLOGIES, INC.,

25 Counterclaim Defendants.

Case No. 3:23-cv-05792-RFL

**MICRON'S OPPOSITION TO YMTC'S
 MOTION TO DISMISS AND STRIKE
 MICRON'S AMENDED
 COUNTERCLAIMS (DKT. 177)**

DEMAND FOR JURY TRIAL

Date: January 7, 2025
 Time: 10:00 a.m. PT
 Judge: Hon. Rita F. Lin
 Courtroom: 15, 18th Floor

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1 **I. INTRODUCTION**

2 In its Motion to Dismiss and Strike (Dkt. 177) (“Mot.”), YMTC manufactures arguments
 3 that ignore and mischaracterize the procedural posture of the case, Micron’s pleadings, and the law.

4 **First**, in arguing that Micron did not timely assert certain counterclaims, YMTC ignores
 5 that in the consolidated action, the parties agreed—and the court ordered—that the parties may
 6 amend their pleadings by October 31, 2024. Neither that order nor the parties’ joint case
 7 management statement for the consolidated action (“JCMS”) restricted Micron’s ability to assert
 8 additional defenses or counterclaims. YMTC argues that Micron was required to show good cause
 9 to amend the case schedule under Rule 16. Not so. Micron’s October 22 Answer and Amended
 10 Counterclaims and its October 31 Amended Answer and Amended Counterclaims were filed
 11 pursuant to Rule 15 in compliance with the operative case schedule.

12 **Second**, YMTC leans heavily on a mischaracterization of Judge Hixson’s discovery order
 13 to cast Micron’s pleadings as “bad faith” filings. Specifically, it argues that because Judge Hixson
 14 denied certain of Micron’s discovery requests, Micron’s amended pleadings are an attempt to skirt
 15 his order. In fact, Judge Hixson *granted* Micron’s discovery into communications involving *any*
 16 *named inventor* and this Action and denied only as to requests that extended to “every YMTC
 17 employee who was previously a Micron engineer.” YMTC’s attempt to cast the counterclaims as
 18 an end run around the discovery order is belied by the fact that Micron will be getting discovery of
 19 communications involving all the named inventors.

20 **Third**, YMTC’s arguments that Micron’s counterclaims lack sufficient factual allegations
 21 are self-contradictory and based on semantics, not substance. On one hand, it critiques Micron’s
 22 allegations about the scope of its former employees’ work arguing that they track too closely the
 23 language of the patent claims. On the other hand, it argues that the allegations do not track closely
 24 enough to the specific language of the employment agreements. This is semantics, not a fault in
 25 the pleadings. Micron pleaded the specific Micron products and features on which each individual
 26 worked and how each individual’s work mirrors the claimed inventions of at least one claim of
 27 each of the YMTC Asserted Patents. YMTC also argues Micron’s allegations are not plausible
 28 given that YMTC allegedly filed the patents one or two years after the employees left Micron. But

1 this is Micron's point: numerous former Micron employees left Micron, joined YMTC, and within
 2 a year or two filed patent applications claiming material they worked on and learned at Micron.
 3 YMTC faults Micron for the clear overlap between the features of Micron products on which these
 4 former Micron employees worked and the YMTC Asserted Patent claim language, but this just
 5 shows that these former employees took what they worked on at Micron, either individually or with
 6 other Micron employees, and turned around a year or two later and unlawfully included them in
 7 patent applications they filed for YMTC. Micron's suspicions and ongoing investigation into the
 8 work these individuals performed at Micron led to Micron's assertion of its well-pleaded defenses
 9 and counterclaims in the consolidated action now before the Court.

10 Finally, in arguing that two of Micron's counterclaims are time-barred, YMTC applies the
 11 wrong statute of limitations. YMTC invokes California's four-year statute of limitations and, in
 12 doing so, fails to analyze Idaho's interest in applying its five-year statute under California's
 13 governmental interest analysis (e.g., Micron is an Idaho-headquartered counterclaimant,¹ the
 14 former Micron employees who filed the YMTC patents worked in Idaho, and events giving rise to
 15 the counterclaims occurred in Idaho, not California). Under Idaho's five-year statute, the
 16 counterclaims are not time-barred, even accepting YMTC's timeline as true. Regardless, YMTC's
 17 arguments about notice present a factual issue inappropriate for resolution at the pleading stage.

18 **II. STATEMENT OF THE ISSUES**

19 1. Whether Micron's Counterclaims V-VIII should be struck for failure to show good
 20 cause, when Micron timely filed them pursuant to the consolidated case schedule and Rule 15,
 21 which do not require a showing of good cause.

22 2. Whether Micron's Counterclaims III-VIII, which seek declaratory judgment of
 23 patent ownership should be dismissed for failure to state a claim when Micron met the applicable
 24 pleading standard for declaratory judgment claims by pleading facts about the inventors'
 25 employment agreements at Micron, the products and technologies on which they worked at Micron,
 26 and the claims of the Asserted Patents.

27
 28 ¹ Micron Technology, Inc. is the sole counterclaim-plaintiff and the sole party to the assignment
 agreements with its ex-employees. Dkt. 170 ("Am. Ans.") (Am. Counterclaims) ¶¶ 20-44.

1 3. Whether Micron's eighth defense that YMTC lacks standing as to the '254, '322,
 2 '378, '806, '031, and '957 patents and its ninth defense that YMTC is thus estopped from asserting
 3 these patents should be struck for the same reasons as Counterclaims III-VIII when they are
 4 likewise supported by well-pleaded facts and YMTC incorrectly invokes the pleading standard for
 5 "affirmative" defenses.

6 4. Whether counterclaims IV and V should be dismissed as time-barred when the
 7 *Idaho*'s five-year statute of limitations applies (not California's four-year statute as argued by
 8 YMTC) and, in any event, there is a factual dispute about constructive notice.

9 **III. FACTUAL BACKGROUND**

10 **A. The YMTC Inventors Worked On Their Purported Inventions At Micron**

11 On November 9, 2023, YMTC filed an action asserting eight patents related to 3D NAND
 12 memory technology against Micron ("YMTC I"). Then, on July 12, 2024, YMTC filed a separate
 13 action against Micron asserting that Micron infringes another 11 of YMTC's patents ("YMTC II"),
 14 10 of which relate to 3D NAND memory technology. Given the overlap between the two actions
 15 (e.g., both accuse the same Micron products and focus on 3D NAND technology), Micron filed a
 16 motion to consolidate YMTC I and YMTC II on July 29, 2024.² Dkt. 88.

17 Before consolidation, Micron put YMTC on notice of its concern that Micron's former
 18 employees were filing patents at YMTC on work that they performed at Micron. On June 27, 2024,
 19 Micron served its preliminary invalidity contentions as to the eight YMTC I patents. There, Micron
 20 asserted that several YMTC patents are invalid for improper inventorship under 35 U.S.C. § 101
 21 because they improperly omit Micron employees as named inventors. The inventions claimed in
 22 these patents were conceived and developed by Micron employees. As noted in those contentions,
 23 Micron was (and still is) actively seeking discovery from YMTC related to inventorship of the
 24 patents, but YMTC "refused to provide responsive information or documents" to allow Micron to
 25 investigate these issues. Rutowski Decl., Ex. 1 at 38-39, 80-81, 124-125, and 158-159.

26 Notably, the relevant inventors worked for years at Micron's Boise, Idaho campus³ before

28 ² Only one patent, first asserted in YMTC II, is not directed toward 3D NAND memory technology.

28 ³ Hongbin Zhu (Am. Ans. (Am. Counterclaims) at ¶¶ 20-21), Qian Tao (*id.* at ¶¶ 26-27), Yushi Hu
 MICRON'S OPPOSITION TO MOTION
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1 moving to China to work for YMTC.⁴ These former employees executed employment agreements
 2 with Micron obligating them to assign to Micron intellectual property that was made, created,
 3 developed, written, reduced to practice, or conceived of, either solely or jointly with others, during
 4 the period of their employment at Micron. Am. Ans. (Am. Counterclaims) ¶¶ 20, 26, 32, 36, 41.

5 **B. Case Management Of The Consolidated Action**

6 The Court granted Micron’s motion to consolidate YMTC I and YMTC II on August 21,
 7 2024. *See* Dkt. 106. The order provided that YMTC could “not add new claims or allegations not
 8 present in the operative complaints from *YMTC I* and *YMTC II*” in the consolidated complaint. *Id.*
 9 at 2. It did not contain any restrictions on Micron’s ability to plead defenses or counterclaims. The
 10 order set a new case management conference and required the parties to submit a new “joint case
 11 management statement with a proposed case schedule” for the consolidated case. *Id.*

12 On August 23, 2024, Micron contacted YMTC to discuss scheduling and the JCMS. After
 13 nearly two weeks of negotiation and exchanging drafts, YMTC and Micron filed the JCMS on
 14 September 11, 2024. Dkt. 133. The JCMS included no restrictions on Micron’s ability to raise
 15 additional defenses and counterclaims—to the contrary, the JCMS anticipated such amendments.
 16 Dkt. 133 at 5. Thus, the “parties also propose[d] deadlines for amendment of the pleadings and the
 17 addition of parties,” namely, October 31, 2024. *Id.* Nothing in the JCMS required Micron to show
 18 good cause to amend its defenses and counterclaims by October 31.

19 In the meantime, YMTC filed its Consolidated Complaint on September 3, 2024 (Dkt. 128)
 20 and, thereafter, Micron timely answered on September 17, 2024 (Dkt. 139).

21 The Court held a joint case management conference on September 18, 2024, and
 22 subsequently issued a scheduling order consistent with the parties’ agreement that the “Last Day to
 23 Amend Pleadings is 10/31/2024.” Dkt. 141. The scheduling order imposed no restrictions related
 24 to defenses or counterclaims that Micron could raise by that deadline. *Id.* On October 8, 2024,

25
 26 (i.d. at ¶¶ 32-33), Jun Liu (i.d. at ¶¶ 36-37), and Changhyun Lee (i.d. at ¶¶ 41-42).

27
 28 ⁴ These ex-Micron employees are named on the face of YMTC’s patents with addresses in China.
See, e.g., ’322 and ’254 patents (“Hongbin Zhu, Wuhan (CN)”; ’378 patent and ’806 patents
 (“Qian Tao, Hubei (CN); Yushi Hu, Hubei (CN”); ’031 patent (“Jun Liu, Hubei (CN”); ’957
 patent (“Changhyun Lee, Wuhan (CN”)).

1 YMTC filed its First Amended Consolidated Complaint (“FACC”) (Dkt. 151) and moved to
 2 dismiss Micron’s answer and counterclaims (Dkt. 152).

3 On October 22, 2024, Micron timely filed an Answer and Amended Counterclaims in
 4 response to YMTC’s FACC (Dkt. 164) (“Micron’s FACC Answer”) under Fed. R. Civ. P. 15(a)(3)
 5 (as to the Answer, 14 days after YMTC’s FACC) and (a)(1)(B) (as to the Counterclaims, within 21
 6 days after a motion under Rule 12(b)).⁵ In its FACC Answer, Micron pleaded several counterclaims
 7 and defenses related to inventorship issues. Specifically, Micron asserted as a Seventh⁶ Defense
 8 that YMTC lacks standing to assert six YMTC Asserted Patents because Micron is the true owner
 9 of those patents; a related Eighth Defense of Estoppel; and six counterclaims for Declaratory
 10 Judgment of Ownership of the same six YMTC Asserted Patents. Dkt. 164 (Defenses) ¶¶ 11-15,
 11 (Counterclaims) ¶¶ 64-87. Micron filed an Amendment to its FACC Answer under Fed. R. Civ. P.
 12 15(a)(2) with YMTC’s consent on October 31, 2024.⁷

13 Micron’s FACC Answer, as well as its October 31 amendment thereto, include specific
 14 information about the relevant former Micron employees-turned-YMTC-inventors who are at the
 15 heart of the counterclaims and defenses at issue on this motion. Specifically, for each former
 16 employee, Micron pleaded facts related to the products and technology on which they worked at
 17 Micron and how their work relates to the relevant YMTC Asserted Patents. Dkt. 164
 18 (Counterclaims) at ¶¶ 20-44; Am. Ans (Am. Counterclaims) ¶¶ 20-44.

19 **C. The Parties’ Discovery Dispute**

20 While the parties prepared and filed pleadings in the consolidated case, they also engaged
 21 in a series of meet and confers over several discovery issues. The parties reached an impasse on
 22 various Micron discovery requests, including those seeking information and documents about the
 23 inventors on YMTC Asserted Patents, including those who are ex-employees of Micron. The
 24 parties submitted a joint discovery letter brief on October 4, 2024, addressing these and other issues.

25
 26 ⁵ Micron’s FACC Answer mooted YMTC’s motion to dismiss.

27 ⁶ Standing and estoppel were seventh and eighth defenses in Micron’s FACC Answer and were
 28 renumbered to eighth and ninth defenses on October 31, 2024.

⁷ Micron filed this amended answer to correct a typographical error.

1 Dkt. 147. After a hearing, Judge Hixson granted Micron discovery into “communications between
 2 *any Named Inventor* and YMTC relating to the YMTC Asserted Patents, Related Patents, or Patent
 3 Applications, Accused YMTC Products, or this Action” and denied certain requests that covered
 4 former Micron employees who are not named inventors. Dkt. 163 at 8 (emphasis added).

5 **IV. YMTC’S MOTION TO DISMISS AND STRIKE SHOULD BE DENIED**

6 **A. Micron Did Not Need Good Cause To File Its Counterclaims**

7 YMTC attempts to manufacture an issue by arguing that Micron needed good cause to file
 8 Counterclaims V to VIII. Mot. at 7-8, 12-13. YMTC in essence contends that Micron’s
 9 counterclaims involving the YMTC I patents in the consolidated action should be governed by the
 10 schedule in the pre-consolidation YMTC I action, even though the consolidated action is subject to
 11 a new schedule. The Court should reject this argument on multiple grounds.

12 As an initial matter, YMTC’s Motion to Strike Counterclaims V to VIII on procedural
 13 grounds is not a proper motion under Rule 12(f)(2), which provides that a court may strike only an
 14 “insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R.
 15 Civ. P. 12(f). YMTC makes no showing under this Rule. Indeed, in most cases, “[a] motion to
 16 strike should not be granted unless the matter to be stricken clearly could have no possible bearing
 17 on the subject of the litigation.” *Platte Anchor Bolt, Inc. v. IHI, Inc.*, 352 F. Supp. 2d 1048, 1057
 18 (N.D. Cal. 2004). Counterclaims V to VIII are not strikable subject matter. But even if they were,
 19 Micron did not need good cause to file them.

20 When this Court consolidated the cases on August 21, 2024, it set a new case management
 21 conference and ordered the parties to submit a new JCMS. Dkt. 106 at 1-2. While the Court ordered
 22 YMTC to file a consolidated complaint that “shall not add new claims or allegations not present in
 23 the operative complaints from *YMTC I* and *YMTC II*,” it placed no restrictions on defenses or
 24 counterclaims that Micron could file in response to YMTC’s consolidated complaint. *Id.* The
 25 parties negotiated and agreed upon a JCMS, which they filed on September 11, 2024, that “t[ook]
 26 the assertion of Micron’s counterclaims into account” and included a deadline to amend pleadings
 27 on October 31, 2024, without requiring a showing of good cause. Dkt. 133. Consistent with this,
 28 the Court conducted a Case Management Conference and ordered a schedule that set October 31,

1 2024, as the “Last Day to Amend Pleadings.” Dkt. 141. Consistent with the JCMS, the order did
 2 not restrict Micron from asserting additional defenses or counterclaims by that deadline and did not
 3 require a showing of good cause. *Id.*

4 YMTC now seeks to walk back its agreement, when all Micron did was file additional
 5 counterclaims, as contemplated by the JCMS, within the time limits proposed by the parties and
 6 entered by the Court. Specifically, YMTC filed its FACC (Dkt. 151) and Motion to Dismiss (Dkt.
 7 152) on October 8, 2024, in response to which Micron filed its Answer and Amended
 8 Counterclaims (Dkt. 164) pursuant to Rule 15(a)(3) and 15(a)(1)(B) on October 22, 2024.
 9 Regarding the answer, Rule 15(a)(3) provides that “any required response to an amended pleading
 10 must be made within the time remaining to respond to the original pleading or within 14 days after
 11 service of the amended pleading, whichever is later.” Fed. R. Civ. P. 15(a)(3). Regarding the
 12 counterclaims, Rule 15(a)(1)(B) provides that a “party may amend its pleading once as a matter of
 13 course no later than: … 21 days after service of a responsive pleading or 21 days after service of a
 14 motion under Rule 12(b), (e), or (f), whichever is earlier.” Fed. R. Civ. P. 15(a)(1). Micron thus
 15 timely filed its Answer and Amended Counterclaims (Dkt. 170) on October 22, 14 days after
 16 YMTC filed its FACC and Motion to Dismiss on October 8, 2024.

17 Micron’s October 22, 2024 Answer and Amended Counterclaims included counterclaims
 18 for a declaratory judgment of ownership of the ’254, ’322, ’378, ’806, ’031, and ’957 patents. On
 19 the October 31, 2024 deadline to amend pleadings, Micron filed its second Amended Answer and
 20 Counterclaims with YMTC’s consent.⁸ Dkt. 141. Because Micron filed its counterclaims on
 21 October 22 pursuant to Rule 15 (a)(1)(B) (as a matter of course) and on October 31 pursuant to
 22 Rule 15(a)(2) (with YMTC’s consent)—both *by* the October 31, 2024 deadline to amend pleadings
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25 ⁸ YMTC gave “written consent that Micron may file its [second] Amended Answer” and stipulated
 26 that Micron may refile its Amended Counterclaims, which Micron informed YMTC were “with
 27 **no revisions** thereto.” Dkt. 168. YMTC now argues that Micron lacked good cause to refile those
 28 Amended Counterclaims. While Micron does not agree that Counterclaims V to VIII are belated
 because they were refiled before the Court’s deadline, by consenting to Micron’s refiling of its
 Amended Counterclaims on October 31, 2024, YMTC waived the argument that these
 counterclaims should be struck for lack of good cause. Fed. R. Civ. P. 15(a)(2) (“A party may amend
 the pleading only with the **opposing party’s written consent or the court’s leave**”).

1 (Dkt. 141)⁹—Micron did not need to seek modification of the schedule under Rule 16(b)(4) and
 2 thus did not need to show “good cause.” *See, e.g., Gerber Plumbing Fixtures, LLC v. Amerifreight,*
 3 *Inc.*, No. 2:15-cv-04146-ODW(RAO), 2015 WL 7259717, at *4 (C.D. Cal. Nov. 16, 2015)
 4 (argument that filing a pleading pursuant to Rule 15 requires “good cause” is “frivolous”).

5 YMTC’s accusations that Micron amended its counterclaims in bad faith are unfounded.
 6 Micron diligently investigated its claims before filing. Were good cause required, it existed. **First**,
 7 contrary to YMTC’s false statements that Judge Hixson “denied” Micron’s discovery, he granted
 8 Micron discovery about the *named inventors* of the YMTC Patents, which include the five ex-
 9 Micron employees. *See* Dkt. 163 at 8. **Second**, Micron put YMTC on notice of its belief that
 10 YMTC lacks ownership with respect to the YMTC I patents (i.e., ’378, ’806, ’031 and ’957 Patents)
 11 when Micron served its YMTC I invalidity contentions on June 27, 2024. *See, e.g.*, Rutowski Decl.,
 12 Ex. 1 at 158-159 (explaining that Changhyun Lee worked on 3D NAND technology at Micron and
 13 conceived of the invention claimed in a YMTC Asserted Patent at Micron); *see also id.*, at 38-39,
 14 80-81, 124-125. Thus, YMTC had notice months ago that certain ex-Micron employees used their
 15 prior work and developments at Micron to file the YMTC Asserted Patents. **Third**, Micron filed
 16 its counterclaims and defenses while the case is still in its early stages, prior to claim construction,
 17 prior to any depositions, and with nearly nine months left for fact discovery (set to close August
 18 26, 2025). Thus, far from bad faith, Micron would have good cause to file, even if it were required.

19 **B. Micron Sufficiently Pleaded Its Counterclaims For Declaratory Judgment Of**
 20 **Ownership Of The Six YMTC Asserted Patents**

21 Although YMTC presents two “reasons” why Micron’s Counterclaims III to VIII “fail” and
 22 should be dismissed, its arguments mischaracterize Micron’s pleadings—which provide sufficient
 23 detail under the applicable pleading standard—and make semantic arguments about the former

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25 ⁹ *M.A. Silva Corks*, which YMTC cites (Mot. at 7), discusses amending pleadings *after* the court’s
 26 deadline has passed. It is thus irrelevant here because Micron filed its Amended Counterclaims
 27 before the Court’s deadline. *M.A. Silva Corks USA, LLC v. M.A. Silva Holdings, Inc.*, No. 22-cv-
 28 04345-AMO, 2024 WL 1180999, at *4 (N.D. Cal. Mar. 18, 2024). *Adobe Systems* (Mot. at 7) is
 similarly inapplicable because it addresses good cause to amend a pleading *“after”* the date
 specified in a scheduling order.” *Adobe Sys. Inc. v. Coffee Cup Partners, Inc.*, No. C 11-2243
 CW, 2012 WL 3877783, at *6 (N.D. Cal. Sept. 6, 2012) (emphasis added).

1 Micron employees' employment agreements. Mot. at 8-12.

2 **1. Micron's Counterclaims Meet the Plausibility Standard for Declaratory**
 3 **Judgment Claims**

4 As an initial matter, YMTC misstates the pleading standard for Micron's declaratory
 5 judgment claims. A declaratory judgment plaintiff is only required to satisfy "standing and
 6 ripeness, by showing under 'all the circumstances' an actual or imminent injury caused by the
 7 defendant ... is of 'sufficient immediacy and reality to warrant the issuance of a declaratory
 8 judgment.'" *Teva Pharms. USA, Inc. v. Novartis Pharms. Corp.*, 482 F.3d 1330, 1338 (Fed. Cir.
 9 2007) (citations omitted). At the motion to dismiss stage, courts only need to evaluate "whether
 10 the facts alleged [taken as true], under all the circumstances, show that there is a substantial
 11 controversy, between parties having adverse legal interests, of sufficient immediacy and reality to
 12 warrant the issuance of a declaratory judgment." *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S.
 13 118, 127 (2007). There are actual, redressable, and immediate controversies between MTI and
 14 YMTC here. Micron pleaded that the ex-Micron employees signed Assignment Agreements with
 15 Micron during their employment; assigned the right, title, and interest to their work to Micron;
 16 departed Micron to join YMTC; and have now filed patents with claims nearly identical to their
 17 work at Micron. Am. Ans. (Am. Counterclaims) ¶¶ 20-44. Micron is requesting relief based on
 18 the concrete set of facts in its counterclaims. *Id.*

19 In contrast, YMTC relies on plausibility standards for *patent infringement* under 35 U.S.C.
 20 § 271(b) and *correction of ownership* under 35 U.S.C. § 116 that are not applicable to Micron's
 21 declaratory judgment claims.¹⁰ Mot. at 10. In the challenged counterclaims, MTI is not making
 22 patent infringement claims or seeking correction of ownership at this time.

23 That said, even under YMTC's caselaw, MTI pleaded sufficient facts. YMTC relies
 24 primarily on *Eastman*, to argue that Micron must "plead facts about *what* each former Micron
 25 employee allegedly 'made, created, developed, written, reduced to practice, or conceived' while

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 27

¹⁰ YMTC waived any argument as to the sufficiency of Micron's well-pleaded declaratory
 28 judgment claims because it addressed only plausibility standards for other causes of action. *SEB
 Inv. Mgmt. AB v. Align Tech., Inc.*, 485 F. Supp. 3d 1113, 1135 (N.D. Cal. 2020).

1 still at Micron.” Mot. at 9; *Eastman v. Apple Inc.*, No. 18-cv-05929-JST, 2018 WL 5982440 (N.D.
 2 Cal. Nov. 14, 2018). No such quote is found in *Eastman*, which provides that a plausible claim of
 3 joint ownership must identify the “specific patent claim” and how the alleged inventor’s “purported
 4 contributions to the Patents align with particular claims.” *Id.*, at *6 (internal quotation marks
 5 omitted). YMTC acknowledges that Micron did this. Specifically, YMTC pointed out that, as an
 6 example, Micron alleged that the former Micron employees “worked on a list of things that largely
 7 track the language of the YMTC patent claims at issue.” Mot. at 9. YMTC cannot simultaneously
 8 argue that Micron’s counterclaims should be dismissed based on caselaw purportedly requiring that
 9 Micron identify the claim terms to which the former employees contributed, on the one hand, but
 10 then turn around and fault Micron for doing so because it tracks the claims too closely, on the other.
 11 Mot. at 9-10. YMTC also ignores that Micron pleaded the specific 3D NAND designs and product
 12 ID numbers to which the former employees contributed and described what these former employees
 13 “made, created, developed, written, reduced to practice, or conceived.” Am. Ans. (Am.
 14 Counterclaims) ¶¶ 20-21, 26-27, 32-33, 36-37, 41-42.

15 YMTC’s argument also incorrectly assumes that Micron needed to plead more information
 16 than necessary. Specifically, YMTC faults Micron for not providing information or documents in
 17 its pleading such as “lab notebooks, invention disclosures, and technical documents.” Mot. at 9.
 18 But the law does not require explicit references to such material at the pleading stage. *Steiner v.*
 19 *Vi-Jon, Inc.*, 723 F. Supp. 3d 784, 791 (N.D. Cal. 2024) (“[p]laintiffs are not required to divulge
 20 their testing data or any other technical particulars in the pleading so that Defendant can attack
 21 them as a factual matter.”); *Dunford v. MusclePharm Corp.*, 907 F.3d 595, 604 n.8 (9th Cir. 2018)
 22 (“plaintiffs are generally not expected to provide evidence in support of their claims at the pleading
 23 stage”).

24 **2. YMTC Misrepresents the Scope of the ex-Micron Employees’ Assignment**
 25 **Agreements**

26 YMTC’s other “reason” why Micron’s counterclaims purportedly fail fares no better.

27 **First**, YMTC makes a semantic argument that because the ex-Micron employees’
 28 agreements obligate them to assign works “made, created, *developed*, written, reduced to practice,

1 or conceived” at Micron, Micron’s allegations related to what the ex-employees “had access to,”
 2 were “involved with,” “knew about,” “worked on,” or “jointly collaborated [on]” are insufficient.
 3 Mot. at 10 (emphasis added). However, this argument is both flawed and gets ahead of itself. It is
 4 flawed because (i) it cherry-picks allegations while ignoring allegations that do mirror the
 5 assignment language, such as those regarding “*development*” work, *see, e.g.*, Am. Ans. (Am.
 6 Counterclaims) ¶¶ 21-23, 27-28, 33-34, 37-38, 42 (emphasis added), (ii) it ignores language in the
 7 assignment agreements that covers works made, created, developed, written, reduced to practice
 8 “*in whole or in part, either solely or jointly with others*,” *see, e.g.*, *id.* ¶¶ 20, 26, 32, 36, 41 (emphasis
 9 added). It gets ahead of itself because whether, for example, Micron’s factual allegations fall within
 10 the ambit of the terms used in the contract is not a question that can be resolved on a motion to
 11 dismiss. Determining what the employees did is a question of fact and comparing that to the
 12 contractual language is a matter for another day.

13 **Second**, YMTC’s argument that Micron’s Assignment Agreements violate California
 14 public policy because they would capture purported “innovations...subsequently conceived at
 15 YMTC” is baseless. The language of these Assignment Agreements addresses works “during the
 16 period of time [the employee is] in the employ of or providing service to [Micron].” Mot. at 11;
 17 Am. Ans. (Am. Counterclaims) ¶¶ 20, 26, 32, 36, 41. Such language is valid to protect Micron’s
 18 proprietary information, and the facts in this case are nothing like those in *Fibrogen*. There, the
 19 court found the assignment agreement to be unlawful because it contractually required an employee
 20 to assign works developed for a period of “one (1) year *after termination* of employment” to the
 21 former employer, which impermissibly “sweep[s] up inventions and discoveries unrelated to the
 22 [former employer’s] proprietary information.” *Fibrogen, Inc. v. Hangzhou Andao Pharm. Ltd.*,
 23 No. 22-cv-07148-AMO, 2024 WL 1199018 at *2, 7 (N.D. Cal. Mar. 20, 2024) (internal quotation
 24 marks omitted); *see also Applied Materials v. Advanced Micro-Fabrication Equip. (Shanghai) Co.*,
 25 630 F. Supp. 2d 1084, 1090 (N.D. Cal. 2009); *Conversion Logic, Inc. v. Measured, Inc.*, No. 2:19-
 26 cv-05546-ODW (FFMx), 2019 WL 6828283, at *7 (C.D. Cal. Dec. 13, 2019). The Assignment
 27 Agreements and the allegations here are directed at work that the named inventors performed while
 28 *at Micron* and subsequently used to file patents at YMTC.

C. Micron's Eighth And Ninth Defenses Likewise Meet The Applicable Pleading Standard, Despite YMTC's Mislabeled Of Them As "Affirmative" Defenses

YMTC argues that Micron's eighth and ninth defenses should be struck for the same reasons as Micron's counterclaims. Mot. at 12. For the reasons discussed above, Micron sufficiently pleaded these defenses under any standard. *See* §§ IV.B.

That said, YMTC argues for the wrong pleading standard. Specifically, it argues that “the heightened pleading standard under *Twombly/Iqbal* applies to affirmative defenses” (Mot. at 12-13), but Micron did not plead its defenses as “affirmative defenses.” *Kanaan v. Yaqub*, 709 F. Supp. 3d 864, 869 (N.D. Cal. 2023) (a defendant “is not limited to affirmative defenses, and Rule 12(h) characterizes lack of subject matter jurisdiction (of which lack of standing is one form) as a ‘legal defense’” not an affirmative defense). Standing is not an affirmative defense because YMTC must prove that it *has* standing to sue; Micron is not required to prove that YMTC lacks standing. See *J&J Sports Prods, Inc. v. Vizcarra*, No. 11-1151 SC, 2011 WL 4501318, at *2 (N.D. Cal. Sept. 27, 2011) (“plaintiff must plead and ultimately prove standing, lack of standing is not an affirmative defense under federal law”) (internal quotation marks and citations omitted); *Polo v. Shwiff*, No. C 12-04461 JSW, 2013 WL 1797671, at *3 (N.D. Cal. Apr. 29, 2013); *G&G Closed Cir. Events, LLC v. Benjamin*, No. 22-cv-04144-SI, 2023 WL 2934930, at *4 (N.D. Cal. Apr. 12, 2023). Micron’s estoppel defense is based on YMTC’s lack of standing to assert the ’254, ’322, ’378, ’806, ’031, and ’957 patents, because YMTC will be estopped from asserting those patents for lack of standing. The cases on which YMTC relies are inapposite because they address *affirmative* defenses (Mot. at 13), not defenses.¹¹

D. Counterclaims IV And V Are Not Time-Barred

Micron's Counterclaims IV and V should not be dismissed for two independent reasons:

¹¹ YMTC's complaints about "fair notice" (Mot. at 12-13, fn. 6, 7) fail for the reasons above. *See, supra*, §§ III.A, IV.A. Micron pleaded facts identifying the technologies and products on which the ex-employees "worked [] and jointly collaborated with other engineers at Micron." Am. Ans. (Am. Counterclaims) ¶¶ 20-21, 26-27, 32-33, 36-37, 41-42. YMTC has been on notice that its patents are infected with inventorship issues since at least June 26, 2024, when Micron served its invalidity contentions related to the YMTC I patents. Besides, this case is in its early stages. Claim construction has yet to begin, neither party has taken depositions, and the close of fact discovery is almost nine months away. The parties have ample time to investigate these issues.

1 (1) under the applicable (Idaho) five-year statute of limitations (“SOL”), the counterclaims are
 2 timely even under YMTC’s timeline; and (2) it would be improper to dismiss these claims at the
 3 pleading stage because constructive notice, upon which YMTC relies, is a fact-intensive inquiry.

4 **1. Counterclaims IV and V Are Not Time-Barred Under Idaho Law**

5 “In a federal question action where the federal court is exercising supplemental jurisdiction
 6 over state claims, the federal court applies the choice-of-law rules of the forum state – in this case,
 7 California.” *Paracor Fin., Inc. v. Gen. Elec. Cap. Corp.*, 96 F.3d 1151, 1164 (9th Cir. 1996). The
 8 Court has supplemental jurisdiction over MTI’s ownership counterclaims pursuant to 28 U.S.C.
 9 § 1337, so California’s governmental interest analysis controls here.¹² Am. Ans. (Am.
 10 Counterclaims) ¶ 7.

11 California’s “governmental interest” test involves a three part inquiry: (1) whether the
 12 relevant law of each of the potentially affected jurisdictions with regard to the particular issue in
 13 question is the same or different; (2) if there is a difference, each jurisdiction’s interest in the
 14 application of its own laws to determine whether there is a true conflict; (3) if there is a true conflict,
 15 the court carefully evaluates and compares the nature and strength of the interest of each jurisdiction
 16 “to determine which state’s interest would be more impaired if its policy were subordinated to the
 17 policy of the other state” and then ultimately applies “the law of the state whose interest would be
 18 the more impaired if its law[s] were not applied.” *Chen v. Los Angeles Truck Ctrs., LLC*, 42 Cal.
 19 App. 5th 488, 495 (2019) (internal quotation marks and citations omitted). Under this test, the
 20 Court must apply Idaho’s five-year statute, not California’s four-year statute.

21 **First**, the relevant statute of limitations for breach of contract in Idaho and California are
 22 different. *Compare* Idaho Code § 5-216 (five-year SOL) *with* Cal. Civ. Proc. Code § 337 (four-

23
 24 ¹² While YMTC acknowledges California’s governmental interest approach, it fails to address the
 25 test’s three-part inquiry, merely concluding in a footnote that California’s SOL applies. Mot. at
 26 13-14, n.8 (acknowledging California courts apply California law choice-of-law principles (i.e.,
 27 governmental interest analysis) in an SOL conflict without additional argument). YMTC
 28 consequently waived further argument. *SEB Inv. Mgmt.*, 485 F. Supp. 3d at 1135. *Regents of
 Univ. of Cal. v. Chen*, cited by YMTC, did not conduct the governmental interest analysis because
 the alleged conduct occurred, and the parties were all based, in California, so no party had any
 reason to invoke the SOL of another state. No. 16-cv-07396-EMC, 2017 WL 3215356, at *1
 (N.D. Cal. July 26, 2017).

1 year SOL). **Second**, there is no true conflict here, and only Idaho has an interest in applying its
 2 statute of limitations. “Although the two potentially concerned states have different laws, there is
 3 still no problem in choosing the applicable rule of law where only one of the states has an interest
 4 in having its law applied” and the state’s interest must be *real* rather than hypothetical. *Chen*, 42
 5 Cal. App. 5th at 496. California has no real interest in applying its SOL here because Micron is an
 6 *Idaho* headquartered company, the ex-Micron employees worked in *Boise, Idaho*, the ex-Micron
 7 employees worked on and developed the technology with others at Micron in *Idaho* and these ex-
 8 Micron employees are not employed by the California YMTC entity. Dkt. 68-3. These ex-Micron
 9 employees reside in China and are associated with the Chinese YMTC entity. While YMTC argues
 10 that California has an interest when “California’s statute would bar a claim,” that interest is hollow
 11 when “no California defendant is involved” and plaintiffs “seek to recover for injuries that occurred
 12 in a state in which the claim was not time-barred.” Mot. at 14, n.8, *Ledesma v. Jack Stewart
 13 Produce, Inc.*, 816 F.2d 482 (9th Cir. 1987); *see also Chen*, 42 Cal. App. 5th at 497. **Third**, the
 14 final prong of this analysis confirms that Idaho’s interest would be more impaired if its statute of
 15 limitations were not applied. Idaho’s five-year SOL is “designed to promote stability and avoid
 16 uncertainty with regards to future litigation.” *Stoltz v. Fry Foods, Inc.*, 60 F. Supp. 3d 1132, 1142
 17 (D. Idaho 2014) (internal quotation marks and citations omitted). Idaho has expressed a
 18 “fundamental policy by requiring strict adherence to its statutory limitations period [of five-years]”
 19 and has even forbidden any shortening of this five-year period by contract. *Indus. Indem. Ins. Co.
 20 v. U.S.*, 757 F.2d 982, 988 (9th Cir. 1985). Adopting California’s SOL here would subvert Idaho’s
 21 fundamental policy. Thus, under California’s government interest test, Idaho law applies here.

22 YMTC argues that Micron’s “ownership claims as to the ’254 Patent and ’378 Patent
 23 accrued when the applications were published” on May 21, 2020, and November 7, 2019. Mot. at
 24 14. Even accepting YMTC’s timeline, Micron’s claims are not time-barred under the proper
 25 (Idaho’s) five-year SOL since Micron first asserted them within five years on October 22, 2024.

26 **2. Constructive Notice Via Publication of a Patent Is a Fact Intensive Inquiry
 27 Not Suitable for Resolution on a Motion to Dismiss**

28 Even if California’s four-year statute of limitations applies (it doesn’t), the question of

1 whether Counts IV and V are time-barred presents a question of fact inappropriate for resolution at
 2 the pleading stage. While some cases note that issuance of a patent is “notice to the world for
 3 certain purposes, [they] do not support the conclusion that such issuance is notice for all purposes,
 4 including the statute of limitations.” *Applera Corp.-Applied Biosystems Grp. v. Illumina, Inc.*, No.
 5 C 07-02845 WHA, 2008 WL 927963, at *1-2 (N.D. Cal. Apr. 4, 2008) (internal quotation marks
 6 and citations omitted); *see also Katz v. Avanir Pharms.*, No. 06cv0496 DMS (LSP), 2006 WL
 7 8455483 at *1 (S.D. Cal. Sept. 11, 2006); *Versata Software, Inc. v. Configit A/S*, No. LA CV20-
 8 09019 JAK (MRWx), 2021 WL 5536287 at *5-6 (C.D. Cal. Sept. 10, 2021). “[A] statute of
 9 limitations issue[]...is a question of fact, and hence, ***inappropriate for resolution on a 12(b)(6)***
 10 ***motion.***” *Katz*, 2006 WL 8455483, at *2 (emphasis added). YMTC’s cited cases do not support
 11 dismissal at this stage. In *Wang*, the court found ***on summary judgment*** that the plaintiff had
 12 reasonable suspicion of misappropriation because he knew his ex-founder defendant breached their
 13 “non-disclosure agreement when he violated his agreement to return the documents containing
 14 Wang’s alleged trade secrets,” knew that his ex-founder defendant went to work for defendants’
 15 company, and knew that his ex-founder defendant “never asked for relief from his duty to return
 16 the trade secrets,” so should have inquired further. *Wang v. Palo Alto Networks, Inc.*, No. C 121-
 17 05579 WHA, 2014 WL 1410346 at *7 (N.D. Cal. Apr. 11, 2014); *Gen. Bedding Corp. v.*
 18 *Echevarria*, 947 F.2d 1395, 1398 (9th Cir. 1991) (also on summary judgment and noting that
 19 “knowledge of the patent does not constitute constructive notice of appellant’s claims against the
 20 defendants”). Unlike *Wang*, Micron pleaded that it “did not have reason to suspect that [any of the
 21 former employees] would utilize joint development work of MTI to apply for patents at [YMTC],
 22 did not have reason to monitor [their] post-employment patent activities, and therefore did not do
 23 so.” Am. Ans. (Am. Counterclaims) ¶¶ 20-44. Thus, dismissal under California’s (inapplicable)
 24 four-year statute of limitations is unwarranted.

25 **V. CONCLUSION**

26 For the foregoing reasons, Micron respectfully requests that the Court deny YMTC’s
 27 Motion to Dismiss and Strike (Dkt. 177).

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1 Dated: December 6, 2024

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